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PART II—Section 1

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation

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MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 9th November, 1978/Kartika 18, 1900 (Saka)

THE SUGAR UNDERTAKINGS (TAKING OVER OF MANAGEMENT) ORDINANCE, 1978

No. 5 OF 1978

Promulgated by the President in the Twenty-ninth Year of the Republic of India.

An Ordinance to provide for the temporary taking over, in the public interest, of the management of certain sugar undertakings in certain circumstances.

WHEREAS for maintaining the continuity of production of sugar, for avoiding undue hardship to cane producing farmers and to best subserve the interests of all sections of the people, it is expedient in the public interest to provide for the taking over for a limited period the management of every sugar undertaking which fails or ceases to manufacture sugar or which fails to pay promptly amounts due for the cane acquired for the purposes of the undertaking;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (*1*) This Ordinance may be called the Sugar Undertakings (Taking Over of Management) Ordinance, 1978.

(*2*) It extends to the whole of India.

(*3*) It shall come into force at once.

Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(*a*) "appointed day", in relation to any sugar year, means such day in the year as the Central Government may, by notification, specify having regard to the agro-climatic conditions prevailing or likely to prevail, the quantity of cane available or likely to be available for crushing and other relevant factors:

Provided that for the sugar year 1978-79, the appointed day shall be the 15th day of November, 1978;

(*b*) "cane" means sugarcane;

(*c*) "date of vesting", in relation to a sugar undertaking, means the date on which the management of the undertaking vests in the Central Government under section 3;

(*d*) "notification" means a notification published in the Official Gazette;

(*e*) "prescribed" means prescribed by rules made under this Ordinance;

(*f*) "sugar undertaking" means an undertaking engaged in the manufacture or production of sugar by means of vacuum pans and with the aid of mechanical power and "notified sugar undertaking" means a sugar undertaking in respect of which a notification has been issued under section 3;

(*g*) "sugar year" means the period of twelve months commencing on the 1st day of October and ending with the 30th day of September next following;

(*h*) words and expressions used but not defined in this Ordinance and defined in the Industries (Development and Regulation) Act, 1951 shall have the meanings respectively assigned to them in that Act and for this purpose a sugar undertaking shall be deemed to be an industrial undertaking within the meaning of that Act; 65 of 1951.

(*i*) words and expressions used but not defined in this Ordinance or in the Industries (Development and Regulation) Act, 1951 but defined in the Companies Act, 1956 shall have the meanings respectively assigned to them in the Companies Act, 1956. 65 of 1951. 1 of 1956.

CHAPTER II

TAKING OVER OF MANAGEMENT

Vesting of management of a sugar undertaking in Central Government.

3. (*1*) Where the Central Government is satisfied—

(*a*) that any sugar undertaking has in any sugar year failed to commence the manufacture of sugar on or before the appointed day in respect of that year, or having started the manufacture of sugar on or before that day ceased to manufacture sugar before the expiry of the average period of manufacture of sugar in relation to that undertaking; or

(*b*) that on any date in any sugar year (hereafter in this clause referred to as the current sugar year) any sugar undertaking has, in relation to the cane purchased before that date for the purposes of the undertaking, arrears of cane dues to the extent of more than ten per cent. of the total price of the cane so purchased during the immediately preceding year; and

(*c*) that in either case the effective functioning of the undertaking is necessary for the purposes of this Ordinance,

the Central Government may issue a notice in such form and in such manner as may be prescribed to the owner or the manager of such sugar undertaking calling upon such owner or manager to report in writing within such time, not being less than five days, as may be specified in the notice, the circumstances under which such undertaking has so failed to commence or ceased to manufacture sugar or, as the case may be, clear the said arrears of cane dues and to show cause as to why the management of such undertaking should not be taken over by the Central Government under this Ordinance.

(*2*) As soon as may be, after the receipt of the report under sub-section (*1*) from the sugar undertaking, or where the sugar undertaking has failed to make such report within the time specified in the notice to that undertaking under sub-section (*1*), after the expiry of such time, the Central Government may make such further inquiry (if any) as it may deem fit and

(*a*) if the Central Government is satisfied that having regard to all the circumstances of the case and the purposes of this Ordinance that it would be expedient to give further time to the undertaking to enable it to commence or resume production of sugar or, as the case may be, clear the arrears of cane dues, it may, by order in writing, specify the date on or before which and the manner in which such undertaking shall commence or resume production of sugar or, as the case may be, clear the said arrears of cane dues; or

(*b*) if the Central Government is not satisfied as provided in clause (*a*), declare by notification that the management of such undertaking shall vest in the Central Government on and from such date as may be specified in such notification.

(*3*) If a sugar undertaking has failed to comply with an order made under clause (*a*) of sub-section (*2*), or having commenced or resumed the production of sugar on or before the date specified in such order, ceased to manufacture sugar before the expiry of the average period

of manufacture of sugar in relation to that undertaking, and the Central Government is satisfied that it is necessary so to do for the purposes of this Ordinance, it may, by notification, declare that the management of such sugar undertaking shall vest in the Central Government on and from such date as may be specified in such notification.

(4) Any failure on the part of the owner or manager of the sugar undertaking to utilise the undertaking for the manufacture of sugar during any period shall not be taken into account for the purpose of issuing a notification in respect of that undertaking under clause (*b*) of sub-section (2) or sub-section (3) where such failure is attributable to any circumstances (other than financial difficulties) beyond his control.

(5) Every notification issued under sub-section (2) or sub-section (3) for vesting the management of a sugar undertaking in the Central Government shall be in force for such period not exceeding three years from the date of vesting as may be specified in the notification but if the period so specified is less than three years from the date of vesting and the Central Government is of opinion that it is expedient in the public interest that the management of the sugar undertaking should continue to vest in the Central Government after the expiry of the period so specified, it may, from time to time, issue, by notification, directions for such continuance for such further period as may be specified in the directions:

Provided that the total period for which the management of the undertaking may remain vested in the Central Government shall in no case exceed three years from the date of vesting.

(6) For the purposes of this section,—

(*a*) "cane dues" in relation to any cane purchased by a sugar undertaking, means the price payable in accordance with the agreement (whether express or implied) or arrangement relating to such purchase and where there is no such agreement or arrangement, the price as determined in accordance with the law applicable to such purchase;

(*b*) any cane dues being the price payable for any cane acquired for the purposes of a sugar undertaking shall not be deemed to be in arrears at any time before the expiry of fourteen days from the date of delivery of such cane to the undertaking;

(*c*) the average period of manufacture of sugar in relation to any sugar undertaking with respect to any sugar year (hereafter in this clause referred to as the current sugar year) shall be calculated by dividing the total number of calendar days during which the undertaking manufactured sugar during the period of three sugar years immediately preceding the current sugar year by the number of sugar years in which the undertaking manufactured sugar during the said period of three years.

Assets, etc., of notified sugar under-taking.

4. (1) The notified sugar undertaking shall be deemed to include all assets, rights, powers, authorities and privileges, in relation to the said undertaking and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery, automobiles and other vehicles and goods under production or in transit, cash balances, reserve fund, investments and all other rights and interest in, or arising

out of, such property as were, immediately before the date of vesting, in the ownership, possession, power or control of that undertaking whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto

(2) Any contract, whether express or implied, or other arrangement (whether under any statute or otherwise) in so far as it relates to the management of the business and affairs of the notified sugar undertaking, and in force immediately before the date of vesting, or any order made by any Court in so far as it relates to the management of the business and affairs of that undertaking and in force immediately before the said date, shall be deemed to have terminated on that date.

(3) All persons in whom the management of the business and affairs of the notified sugar undertaking vests immediately before the date of vesting shall, as from that date, cease to be so vested.

(4) Notwithstanding any judgment, decree or order of any Court, tribunal or other authority or anything contained in any law (other than this Ordinance) for the time being in force, every Receiver, Official Liquidator or other person in whose possession or custody or under whose control the notified sugar undertaking or any part thereof may be immediately before the date of vesting, shall, on that date, deliver the possession of the said undertaking or such part thereof, as the case may be, to the Custodian, appointed under section 5, or, where no Custodian has been appointed, to such other person as the Central Government may direct.

(5) The Central Government may take, or cause to be taken, all necessary steps for securing the possession of the notified sugar undertaking.

Appointment of Custodian.

5. (1) The Central Government may as soon as it is convenient administratively so to do, appoint an individual or a body of individuals or a Government company as the Custodian of a notified sugar undertaking or a group of notified sugar undertakings for the purpose of taking over the management of such undertaking or undertakings and the Custodian so appointed shall carry on the management of such undertaking or undertakings for and on behalf of the Central Government.

(2) The Central Government may also appoint an individual or a Government company as the Custodian-General for exercising supervision and control over all the notified sugar undertakings, and on such appointment, every Custodian appointed under sub-section (1) shall act under the guidance, control and supervision of the Custodian-General.

(3) On the appointment of a Custodian under sub-section (1), the charge of management of the notified sugar undertaking or group of notified sugar undertakings, as the case may be, shall vest in such Custodian and all persons in charge of the management of such undertaking or undertakings immediately before such appointment shall cease to be in charge of such management and shall be bound to deliver to the Custodian all assets, books of account, registers or other documents in their custody relating to such undertaking or group of undertakings.

(4) The Central Government may issue such directions (including directions as to initiating, defending or continuing any legal proceedings before any Court, tribunal or other authority) to the Custodian or Custodian-General as to his or its powers and duties as the Central Government deems desirable and the Custodian-General or, if there is no Custodian-General, the Custodian may apply to the Central Government at

any time for instructions as to the manner in which the Custodian or the Custodian-General shall conduct the management of the notified sugar undertaking or in relation to any matter arising in the course of such management.

(5) Any person, who, on the appointed day, has in his possession or under his control any books, papers or other documents relating to the notified sugar undertaking, shall, notwithstanding anything contained in any other law for the time being in force, be liable, to account for the books, papers and other documents, to the Custodian and shall deliver them up to the Custodian or to such other person as may be authorised by the Central Government or the Custodian in this behalf.

(6) Every person in charge of the management of the notified sugar undertaking, immediately before the date of vesting, shall, within ten days from that date or within such further period as the Central Government may allow in this behalf, furnish to the Custodian a complete inventory of all the properties and assets (including particulars of book debts, investments and belongings) forming part of the undertaking immediately before the date of vesting and of all liabilities and obligations of the undertaking subsisting immediately before that date and also of all agreements entered into by the owner or manager of the undertaking, in relation to the said undertaking, and in force immediately before that date.

(7) The Custodian-General shall hold office during the pleasure of the Central Government and shall receive such remuneration as may be fixed by the Central Government.

(8) Every Custodian or where a body of individuals has been appointed as the Custodian, each such individual shall hold office during the pleasure of the Central Government and shall receive from the funds of the sugar undertaking or group of sugar undertakings concerned, such remuneration as may be fixed by the Central Government.

Explanation.—The remuneration payable to the Custodian of two or more notified undertakings shall be allocated among the funds of the undertakings in such proportion as the Central Government may, having regard to the quantum of work in respect of such undertakings and other relevant circumstances, by order determine.

Payment of amount.

6. (1) The owner of every notified sugar undertaking shall be given by the Central Government an amount in cash for vesting in it under section 3 the management of such undertaking.

(2) For every month during which the management of the notified sugar undertaking remains vested in the Central Government under this Ordinance, the amount referred to in sub-section (1) shall be—

(a) where the daily cane crushing capacity of the undertaking is five hundred tonnes or less, an amount of five hundred rupees; and

(b) where the daily cane crushing capacity of the undertaking is more than five hundred tonnes, an amount computed at the rate of one rupee for each tonne of such capacity or an amount of one thousand two hundred and fifty rupees,

whichever is less.

CHAPTER III

RELIEF TO SUGAR UNDERTAKINGS AND CANE PRODUCING FARMERS

Power of Central Government to make certain declarations.

7. (*1*) The Central Government may, if it is satisfied, in relation to a notified sugar undertaking that it is necessary so to do in the interests of the general public with a view to preventing the fall in the volume of production of the sugar industry, it may, by notification, declare that—

(*a*) all or any of the enactments specified in the Schedule shall not apply or shall apply with such adaptations, whether by way of modification, or omission (which does not, however, affect the policy of the said enactments) to such sugar undertaking, as may be specified in such notification, or

(*b*) the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force (to which such sugar undertaking or the person owning such undertaking is a party or which may be applicable to such sugar undertaking or person) immediately before the date of issue of the notification shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified in the notification.

(*2*) The notification made under sub-section (*1*) in relation to a notified sugar undertaking shall remain in force, in the first instance, for such period not exceeding one year as may be specified in the notification but the duration of such notification may be extended from time to time by a further notification by a period not exceeding one year at a time.

(*3*) Any notification made under sub-section (*1*) shall have effect notwithstanding anything to the contrary contained in any other law, agreement, or instrument or any decree or order of a Court, tribunal, officer or other authority or of any submission, settlement or standing order.

(*4*) Any remedy for the enforcement of any right, privilege, obligation or liability referred to in clause (*b*) of sub-section (*1*) and suspended or modified by a notification made under that sub-section shall, in accordance with the terms of the notification, remain suspended or modified and all proceedings relating thereto pending before any Court, tribunal, officer or other authority shall accordingly remain stayed or be continued subject to such adaptations, so, however, that on the notification ceasing to have effect—

(*a*) any right, privilege, obligation or liability so remaining suspended or modified shall become revived and enforceable as if the notification had never been made;

(*b*) any proceeding so remaining stayed shall be proceeded with subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings become stayed.

(*5*) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability referred to in clause (*b*) of sub-section (*1*), the period during which it or the remedy for the enforcement thereof remained suspended shall be excluded.

Assistance to notified sugar undertakings to clear arrears of cane dues.

8. (*1*) The Central Government may issue such directions as it deems fit to the Custodian-General and the Custodians to facilitate the speedy clearance of arrears of cane dues so as to avoid undue hardship to cane producing farmers.

(*2*) Without prejudice to the provisions of sub-section (*1*), the Central Government may render such assistance in such manner as it may deem fit to any notified sugar undertaking to enable the undertaking to clear the whole or any part of its arrears of cane dues so as to avoid undue hardship to cane producing farmers.

Explanation.—For the purposes of this section, the expression "arrears of cane dues" shall be construed in accordance with the provisions of clauses (*a*) and (*b*) of sub-section (*6*) of section 3.

CHAPTER IV

MISCELLANEOUS

Notified sugar undertaking, if a company, not to be wound up.

9. (*1*) No proceeding for the winding up of a notified sugar undertaking, being a company, shall lie in any court or be continued whether by or under the supervision of any court or voluntarily, except with the consent of the Central Government.

(*2*) In computing the period of limitation prescribed by any law for the time being in force for any application which may be made in the course of winding up of any such notified sugar undertaking in respect of any matter arising out of any transaction in relation to such undertaking, the time during which the making of such application was barred by this Ordinance shall be excluded.

Contracts, etc. in bad faith may be cancelled or varied.

10. (*1*) If the Central Government is satisfied, after such inquiry as it may think fit, that any contract or agreement entered into by the owner or manager of a notified sugar undertaking, in relation to the said undertaking, at any time within twelve months immediately preceding the date of vesting, has been entered into in bad faith and is detrimental to the interests of the undertaking, it may make an order cancelling or varying (either unconditionally or subject to such conditions as it may think fit to impose) the contract or agreement and thereafter the contract or agreement shall have effect accordingly:

Provided that no contract or agreement shall be cancelled or varied except after giving to the parties to the contract or agreement a reasonable opportunity of being heard.

(*2*) Any person aggrieved by an order made under sub-section (*1*) may make an application to the principal Court of civil jurisdiction within the local limits of whose jurisdiction the registered office of the sugar undertaking is situated for the variation or reversal of such order and, thereupon such Court may confirm, vary or reverse such order.

Power to terminate the contract of employment.

11. If the Custodian or Custodian-General is of opinion that any contract of employment entered into by any owner or member of a notified sugar undertaking or its agent in relation to the said undertaking, at any time before the date of vesting, is unduly onerous, he may, by giving to the employee one month's notice in writing or the

salary or wages for one month in lieu thereof, terminate such contract of employment.

Management of notified sugar undertakings pending taking over physical possession by the Custodian.

12. (*1*) Pending the taking over by a Custodian, appointed under section 5, of the physical possession of any notified sugar undertaking, the person in charge of the management of such undertaking immediately before the date of vesting shall, on and from that date, be in charge of the management of such undertaking for and on behalf of the Central Government; and the management of such undertaking shall be carried on by such person subject to the provisions contained in sub-section (*2*) and such directions, if any, as the Central Government may give to him and no other person, including the said undertaking shall, so long as such management continues, exercise any powers of management in relation to the said undertaking.

(*2*) No person in charge, under sub-section (*1*), of a notified sugar undertaking shall, without the previous approval of the Custodian-General appointed under section 5—

(*i*) incur any expenditure from the assets appertaining to the undertaking otherwise than for the purpose of making routine payments of salaries or commissions to employees, agents or for the purpose of meeting the routine day to day expenditure;

(*ii*) transfer or otherwise dispose of any such assets or create any charge, hypothecation, lien or other incumbrance thereon;

(*iii*) invest in any manner any moneys forming part of such assets;

(*iv*) acquire any immovable property out of the moneys forming part of such assets;

(*v*) enter into any contract of service or agency, whether expressly or by implication, for purposes connected wholly or partly with the undertaking or vary the terms and conditions of any contract relating to any such transaction subsisting on the date of vesting.

(*3*) The approval of the Custodian-General may be given either generally in relation to certain classes of transactions relating to the notified sugar undertaking or specially in relation to any of its transactions.

Protection of action taken in good faith.

13. (*1*) No suit, prosecution or other legal proceeding shall lie against the Government, the Custodian-General or any other officer of Government or any Custodian in respect of anything which is in good faith done or intended to be done under this Ordinance.

(*2*) No suit or other legal proceeding shall lie against the Government, the Custodian-General or any other officer of Government or any Custodian for any damage caused, or likely to be caused, by anything which is in good faith done or intended to be done under this Ordinance.

Delegation of powers.

14. (*1*) The Central Government may, by notification, direct that all or any of the powers exercisable by it under this Ordinance, other than those under this section or section 8 or section 20 may also be exercised by any person or persons as may be specified in the notification.

(2) Whenever any delegation of power is made under sub-section (1), the person to whom such power has been delegated shall act under the direction, control and supervision of the Central Government.

Debts incurred for the purposes of notified sugar undertakings to have priority.

15. Every debt arising out of any loan advanced to a notified sugar undertaking by the Central Government or a State Government for carrying on the management of such undertaking—

(a) shall have priority over all other debts, whether secured or unsecured, incurred before the management of such undertaking was taken over under this Ordinance;

(b) shall be a preferential debt within the meaning of section 530 of the Companies Act, 1956, 1 of 1956.

and such debts shall rank equal among themselves and be paid in full out of the assets of the undertaking unless such assets are insufficient to meet them, in which case they shall abate in equal proportions.

Penalties.

16. If any person—

(a) fails to deliver to the Custodian any assets, books of account, registers or any other documents in his custody relating to any notified sugar undertaking, or

(b) retains any property of such undertaking or removes or destroys it, or

(c) fails to comply with the provisions of section 5, or

(d) fails to comply with any direction made under this Ordinance,

he shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Offences by companies.

17. (1) Where an offence under this Ordinance has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm.

Ordinance not to apply to certain sugar undertakings.

18. (*1*) The provisions of this Ordinance shall not apply to any sugar undertaking which is owned by or is under the management of the Central Government or a State Government or a corporation established by or under an enactment (including an Ordinance) or a Government company as defined in section 617 of the Companies Act, 1956.

1 of 1956.

(2) For the purposes of sub-section (*1*), the management of a sugar undertaking by a receiver or an authorised controller appointed by the Central Government or a State Government under any law for the time being in force shall also be deemed to be management of the undertaking by the Central Government or a State Government, as the case may be.

Ordinance to have overriding effect.

19. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any law (other than this Ordinance) or any judgment, decree or order of any Court, tribunal or other authority or any instrument having effect by virtue of any law other than this Ordinance.

Power to make rules.

20. The Central Government may, by notification, make rules to carry out the provisions of this Ordinance.

Laying of rules and certain notifications.

21. Every rule made by the Central Government under this Ordinance and every notification made under section 7 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

THE SCHEDULE

(*See* section 7)

1. The Industrial Employment (Standing Orders) Act, 1946.	20 of 1946.
2. The Industrial Disputes Act, 1947.	14 of 1947.
3. The Minimum Wages Act, 1948.	11 of 1948.

N. SANJIVA REDDY,
President.

R. V. S. PERI SASTRI,
Secy. to the Govt. of India.

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